

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

DAVID BERNHARD WITTE,

Civil 04-4152 (JRT/FLN)

Plaintiff,

v.

O R D E R

STATE OF MINNESOTA, ET AL.,

Defendants.

David Bernhard Witte, Post Office Box 582552, Minneapolis, Minnesota 55458, *pro se* plaintiff.

John S. Garry, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL, 445 Minnesota Street, St. Paul, Minnesota 55101, for defendants.

Based upon the Findings of Fact, Conclusions of Law, and Recommendation by United States Magistrate Judge Franklin L. Noel dated July 19, 2005, all the files and records, and no objections having been filed to said Report and Recommendation,

IT IS HEREBY ORDERED that:

1. Defendant's motion to dismiss the amended complaint [Docket No. 44] is

GRANTED;

2. Plaintiff's motion to appoint counsel and to certify class [Docket No. 4] is

DENIED as moot; and

3. Plaintiff's motion for consolidation and transfer to the MDL [Docket No. 5] is DENIED as moot.

DATED: August 8, 2005
at Minneapolis, Minnesota

s/John R. Tunheim
JOHN R. TUNHEIM
United States District Judge